

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

PART 74
OFFENSES AND PENALTIES

333.7401 Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; "plant" defined.

Sec. 7401. (1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(iv) and:

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$1,000,000.00, or both.

(ii) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony and punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000.00, or both.

(iii) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000.00, or both.

(iv) Which is in an amount less than 50 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(b) Either of the following:

(i) A substance described in section 7212(1)(g) or 7214(c)(ii) is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(ii) Any other controlled substance classified in schedule 1, 2, or 3, except marihuana is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$10,000.00, or both.

(c) A substance classified in schedule 4 is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(d) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows:

(i) If the amount is 45 kilograms or more, or 200 plants or more, by imprisonment for not more than 15 years or a fine of not more than \$10,000,000.00, or both.

(ii) If the amount is 5 kilograms or more but less than 45 kilograms, or 20 plants or more but fewer than 200 plants, by imprisonment for not more than 7 years or a fine of not more than \$500,000.00, or both.

(iii) If the amount is less than 5 kilograms or fewer than 20 plants, by imprisonment for not more than 4 years or a fine of not more than \$20,000.00, or both.

(e) A substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(f) A prescription form or a counterfeit prescription form is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(3) A term of imprisonment imposed under subsection (2)(a) may be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

(4) If an individual was sentenced to lifetime probation under subsection (2)(a)(iv) as it existed before March 1, 2003 and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(5) As used in this section, "plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1987, Act 275, Eff. Mar. 30, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1989, Act 143, Eff. Sept. 28, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 1994, Act 221, Eff. Mar. 30, 1995;—Am. 1996, Act 249, Eff. Jan. 1, 1997;—Am. 1998, Act 319, Eff. Oct. 1, 1998;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2001, Act 236, Eff. Jan. 6, 2003;—Am. 2002, Act 665, Eff. Mar. 1, 2003;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 352, Imd. Eff. Dec. 22, 2010.

Compiler's note: For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Enacting section 2 of Act 236 of 2001 provides:

“Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data.”

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

333.7401a Delivery of controlled substance; violation of MCL 750.520b to 750.520e or MCL 750.520g.

Sec. 7401a. (1) A person who, without an individual's consent, delivers a controlled substance or a substance described in section 7401b or causes a controlled substance or a substance described in section 7401b to be delivered to that individual to commit or attempt to commit a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, against that individual is guilty of a felony punishable by imprisonment for not more than 20 years.

(2) A conviction or sentence under this section does not prohibit a conviction or sentence for any other crime arising out of the same transaction.

(3) This section applies regardless of whether the person is convicted of a violation or attempted violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

History: Add. 1998, Act 319, Eff. Oct. 1, 1998;—Am. 2000, Act 302, Eff. Jan. 1, 2001.

Popular name: Act 368

Popular name: Date Rape

Popular name: Date Rape Drug

333.7401b Manufacture, delivery, or possession of gamma-butyrolactone prohibited; exception; violation; definitions.

Sec. 7401b. (1) A person shall not do any of the following:

(a) Manufacture, deliver, or possess with intent to manufacture or deliver gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(b) Knowingly or intentionally possess gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(2) Subsection (1) does not prohibit manufacturing, delivering, possessing with intent to manufacture or deliver, or possessing gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone for use in a commercial application and not for human consumption. It is an affirmative defense to a prosecution under this section that the person manufactured, delivered, possessed with intent to manufacture or deliver, or possessed gamma-butyrolactone or the material, compound, mixture, or preparation containing gamma-butyrolactone in compliance with this subsection.

(3) A person who violates this section is guilty of a crime as follows:

(a) For a violation of subsection (1)(a), the person is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(b) For a violation of subsection (1)(b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(4) As used in this section:

(a) “Commercial application” means as an ingredient in a lawful product, for use in the process of manufacturing a lawful product, or for lawful use as a solvent.

(b) "Deliver" means the actual, constructive, or attempted transfer from 1 person to another of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, whether or not there is an agency relationship.

(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. It includes the packaging or repackaging of the substance or labeling or relabeling of its container.

(d) "Person" means that term as defined in section 1106 or a governmental entity.

History: Add. 2000, Act 302, Eff. Jan. 1, 2001.

Popular name: Act 368

Popular name: Date Rape

Popular name: Date Rape Drug

333.7401c Manufacture of controlled substance; prohibited acts; violation as felony; exceptions; imposition of consecutive terms; court order to pay response activity costs; definitions.

Sec. 7401c. (1) A person shall not do any of the following:

(a) Own, possess, or use a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(c) Provide any chemical or laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or laboratory equipment for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(2) A person who violates this section is guilty of a felony punishable as follows:

(a) Except as provided in subdivisions (b) to (f), by imprisonment for not more than 10 years or a fine of not more than \$100,000.00, or both.

(b) If the violation is committed in the presence of a minor, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(c) If the violation involves the unlawful generation, treatment, storage, or disposal of a hazardous waste, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(d) If the violation occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(e) If the violation involves the possession, placement, or use of a firearm or any other device designed or intended to be used to injure another person, by imprisonment for not more than 25 years or a fine of not more than \$100,000.00, or both.

(f) If the violation involves or is intended to involve the manufacture of a substance described in section 7214(c)(ii), by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(3) This section does not apply to a violation involving only a substance described in section 7214(a)(iv) or marihuana, or both.

(4) This section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

(5) A term of imprisonment imposed under this section may be served consecutively to any other term of imprisonment imposed for a violation of law arising out of the same transaction.

(6) The court may, as a condition of sentence, order a person convicted of a violation punishable under subsection (2)(c) to pay response activity costs arising out of the violation.

(7) As used in this section:

(a) "Hazardous waste" means that term as defined in section 11103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11103.

(b) "Laboratory equipment" means any equipment, device, or container used or intended to be used in the process of manufacturing a controlled substance, counterfeit substance, or controlled substance analogue.

(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or

processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture does not include any of the following:

- (i) The packaging or repackaging of the substance or labeling or relabeling of its container.
- (ii) The preparation or compounding of a controlled substance by any of the following:
 - (A) A practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of his or her professional practice.
 - (B) A practitioner, or by the practitioner's authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- (d) "Minor" means an individual less than 18 years of age.
- (e) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
- (f) "School property" means that term as defined in section 7410.
- (g) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

History: Add. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2003, Act 310, Eff. Apr. 1, 2004.

Popular name: Act 368

333.7402 Creating, manufacturing, delivering, or possessing with intent to deliver counterfeit substance or controlled substance analogue intended for human consumption; applicability of section and certain federal provisions; violations; penalties.

Sec. 7402. (1) Except as authorized by this article, a person shall not create, manufacture, deliver, or possess with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption. This section does not apply to a person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. 355. For purposes of this section, section 505 of the federal food, drug, and cosmetic act shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

(2) A person who violates this section as to:

- (a) A counterfeit substance classified in schedule 1 or 2 which is either a narcotic drug or a drug described in section 7212(1)(g) or 7214(a)(iv) or (c)(ii), is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.
- (b) Any other counterfeit substance classified in schedule 1, 2, or 3, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.
- (c) A counterfeit substance classified in schedule 4, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.
- (d) A counterfeit substance classified in schedule 5, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.
- (e) A controlled substance analogue, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$250,000.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2002, Act 710, Eff. Apr. 1, 2003.

Popular name: Act 368

333.7403 Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; discharge from lifetime probation.

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

- (a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(iv), and:
 - (i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$1,000,000.00, or both.

(ii) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000.00, or both.

(iii) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000.00, or both.

(iv) Which is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$25,000.00, or both.

(v) Which is in an amount less than 25 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$25,000.00, or both.

(b) Either of the following:

(i) A substance described in section 7212(1)(g) or 7214(c)(ii) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(ii) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (b)(i), (c), or (d), or a controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(d) Marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(e) A prescription form is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) If an individual was sentenced to lifetime probation under subsection (2)(a)(iv) as it existed before March 1, 2003 and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 47, Eff. Mar. 30, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1989, Act 143, Eff. Sept. 28, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 1994, Act 221, Eff. Mar. 30, 1995;—Am. 1996, Act 249, Eff. Jan. 1, 1997;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2001, Act 236, Eff. Jan. 6, 2003;—Am. 2002, Act 665, Eff. Mar. 1, 2003;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 169, Eff. Oct. 1, 2010;—Am. 2010, Act 352, Imd. Eff. Dec. 22, 2010.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- "severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ..." -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. *Harmelin v Michigan*, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

In *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court held that the Michigan Constitution prohibits cruel or unusual punishment while the Eighth Amendment to the US Constitution bars only punishment that is both cruel and unusual. Basing its decision on the textual difference, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine is so grossly disproportionate as to be cruel or unusual, the result being that those portions of the statutes denying parole consideration are struck down.

Compiler's note: Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data."

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

333.7403a Fraudulently obtaining controlled substance or prescription from health care

provider; certain privileges inapplicable to released or available medical records or information; immunity from civil or administrative liability; violation; penalty; probation; screening and assessment by bureau of substance abuse and addiction services; other violations; "health care provider" defined.

Sec. 7403a. (1) A person shall not fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider.

(2) The following privileges do not apply to medical records or information released or made available under subsection (1):

(a) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) The dentist-patient privilege created in section 16648.

(c) Any other health professional-patient privilege created or recognized by law.

(3) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1419, an individual who in good faith provides access to medical records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

(4) A person who violates this section is guilty of a crime as follows:

(a) Except as provided in subsection (5), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(5) The court may place a person who has not previously been convicted of violating this section on probation subject to the terms and conditions set forth in section 7411.

(6) The court may order any person convicted of violating this section to undergo screening and assessment by a person or agency designated by the bureau of substance abuse and addiction services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under this section, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

(7) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of this section.

(8) As used in this section, "health care provider" means that term as defined in section 9206.

History: Add. 2010, Act 354, Imd. Eff. Dec. 22, 2010.

Popular name: Act 368

333.7404 Use of controlled substance or controlled substance analogue; violations; penalties.

Sec. 7404. (1) A person shall not use a controlled substance or controlled substance analogue unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 as a narcotic drug or a drug described in section 7212(1)(g) or 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(b) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (c), or (d), or a controlled substance analogue, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500.00, or both.

(d) Marihuana, catha edulis, salvia divinorum, or a substance described in section 7212(1)(h) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 169, Eff. Oct. 1, 2010.

Popular name: Act 368

333.7405 Prohibited conduct generally; violation; penalties.

Sec. 7405. (1) A person:

(a) Who is licensed by the administrator under this article shall not distribute, prescribe, or dispense a controlled substance in violation of section 7333.

(b) Who is a licensee shall not manufacture a controlled substance not authorized by his or her license or distribute, prescribe, or dispense a controlled substance not authorized by his or her license to another licensee or other authorized person, except as authorized by rules promulgated by the administrator.

(c) Shall not refuse an entry into any premises for an inspection authorized by this article.

(d) Shall not knowingly keep or maintain a store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

(e) Who is a practitioner shall not dispense a prescription for a controlled substance written and signed or transmitted by facsimile, electronic transmission, or other means of communication by a physician prescriber or dentist prescriber licensed to practice in a state other than Michigan, unless the prescription is issued by a physician prescriber or dentist prescriber who is authorized under the laws of that state to practice dentistry, medicine, or osteopathic medicine and surgery and to prescribe controlled substances.

(2) A person who violates subsection (1) is subject to the penalties prescribed in section 7406.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1997, Act 153, Eff. Mar. 31, 1998;—Am. 2004, Act 536, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 672, Imd. Eff. Jan. 10, 2007;—Am. 2009, Act 150, Imd. Eff. Nov. 19, 2009;—Am. 2011, Act 155, Imd. Eff. Sept. 27, 2011.

Popular name: Act 368

Administrative rules: R 338.493a et seq. and R 338.3101 et seq. of the Michigan Administrative Code.

333.7406 Violation of MCL 333.7405; penalty.

Sec. 7406. A person who violates section 7405 may be punished by a civil fine of not more than \$25,000.00 in a proceeding in the circuit court. However, if the violation is prosecuted by a criminal indictment alleging that the violation was committed knowingly or intentionally, and the trier of the fact specifically finds that the violation was committed knowingly or intentionally, the person is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than \$25,000.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7407 Prohibited conduct; violation as felony; penalty.

Sec. 7407. (1) A person shall not knowingly or intentionally:

(a) Distribute as a licensee a controlled substance classified in schedule 1 or 2, except pursuant to an order form as required by section 7331.

(b) Use in the course of the manufacture or distribution of a controlled substance a license number that is fictitious, revoked, suspended, or issued to another person.

(c) Acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(d) Furnish false or fraudulent material information in, or omit any material information from, an application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article.

(e) Make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon a drug or container or labeling thereof so as to render the drug a counterfeit substance.

(f) Possess counterfeit prescription forms, except as an agent of government while engaged in the enforcement of this part.

(2) A person shall not refuse or knowingly fail to make, keep, or furnish any record, notification, order form, statement, invoice, or other information required under this article.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$30,000.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 2001, Act 236, Eff. Jan. 6, 2003.

Compiler's note: Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data."

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

333.7407a Attempt to violate or knowingly or intentionally solicit, induce, or intimidate another person to violate part; penalty.

Sec. 7407a. (1) A person shall not attempt to violate this part.

(2) A person shall not knowingly or intentionally solicit, induce, or intimidate another person to violate this part.

(3) Except as otherwise provided in section 7416, a person who violates this section is guilty of a crime punishable by the penalty for the crime he or she attempted to commit, or by the penalty for the crime he or she solicited, induced, or intimidated another person to commit.

History: Add. 1994, Act 220, Eff. Mar. 30, 1995.

Popular name: Act 368

333.7408 Penalty cumulative.

Sec. 7408. A penalty imposed for violation of this article is in addition to, and not in lieu of, a civil or administrative penalty or sanction otherwise authorized by law.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7408a Licensing sanctions.

Sec. 7408a. (1) As part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court shall consider all prior convictions currently entered upon the criminal history record and Michigan driving record of the person, except those convictions which, upon motion of the defendant, are determined by the court to be constitutionally invalid, and, subject to subsection (11), shall impose the following licensing sanctions in addition to any other penalty or sanction imposed for the violation:

(a) If the court finds that the person does not have a prior conviction within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 6 months. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first 30 days of the period of suspension.

(b) If the court finds that the person has 1 or more prior convictions within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 1 year. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first 60 days of the period of suspension.

(2) The person whose operator's or chauffeur's license is ordered suspended under this section shall immediately surrender his or her operator's or chauffeur's license to the court. The court shall immediately destroy the license and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to, the abstract of conviction with court-ordered license sanctions, the secretary of state shall suspend the person's license and, if ordered by the court and if the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the judgment is appealed to circuit court, the court may, ex parte, order the secretary of state to stay the suspension or license restriction issued under this section pending the outcome of the appeal.

(3) Except as otherwise provided in subsection (5), before imposing sentence or entering a juvenile

disposition, other than court-ordered license sanctions under this section, for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court may order the person to undergo screening and assessment by a person or agency as designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The person shall pay for the costs of the screening and assessment services.

(4) Except as otherwise provided in subsection (5), as part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court may order the person to do 1 or both of the following:

(a) Perform service to the community for not more than 90 days. A person ordered to perform service to the community under this subdivision shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(b) Participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the rehabilitative services.

(5) Subsections (3) and (4) do not apply to a person who is not eligible for probation under chapter XI of the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.14a.

(6) A restricted license issued in compliance with an order under this section shall permit the person to whom it is issued to drive under the following circumstances:

(a) In the course of the person's employment or occupation.

(b) To and from any combination of the following:

(i) The person's residence.

(ii) The person's work location.

(iii) An alcohol or drug education or treatment program as ordered by the court.

(iv) The court probation department.

(v) A court-ordered community service program.

(vi) An educational institution at which the person is enrolled as a student.

(vii) A place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

(7) The court shall not order the secretary of state under this section to issue a restricted license that would permit a person to operate a commercial motor vehicle that hauls hazardous material.

(8) The court shall not order the secretary of state under this section to issue a restricted license unless the person states under oath, and the court finds by testimony taken in open court or by statements contained in a sworn affidavit on a form prescribed by the state court administrator, that both of the following apply:

(a) The person needs vehicular transportation to and from his or her work location, place of alcohol or drug education treatment, court probation department, court-ordered community service program, or educational institution, or in the course of the person's employment or occupation.

(b) The person is unable to take public transportation and does not have any family members or other individual able to provide transportation to a destination or for a purpose described in subdivision (a).

(9) Regardless of a court order issued under this section, the secretary of state shall not issue a restricted license to a person whose license is suspended under this section unless a restricted license is authorized under this section and the person is otherwise eligible for a license.

(10) While driving, the person shall carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and shall display that proof upon a peace officer's request.

(11) A court shall not order the suspension of a person's license if the person is sentenced to life imprisonment or to a minimum term of imprisonment that exceeds 1 year for an attempt to violate, a conspiracy to violate, or a violation of part 74 or section 17766a.

(12) The court shall do both of the following:

(a) Transmit a record of each order issued under this section to the secretary of state.

(b) Forward to the department of state police, on a form or forms prescribed by the state court administrator, a record that specifies the penalties imposed by the court for an offense described in subsection (1), including a licensing sanction ordered under this section and a term of imprisonment imposed for the offense.

(13) Except as otherwise provided by law, a record described in subsection (12) is a public record, and the department of state police shall retain the information contained in that record for not less than 7 years.

(14) As used in this section:

(a) "Commercial motor vehicle" means that term as defined in section 7a of the Michigan vehicle code, 1949 PA 300, MCL 257.7a.

(b) "Conviction" means a final conviction, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, a probate court disposition, or a juvenile adjudication, for a criminal law violation, regardless of whether the penalty is rebated or suspended.

(c) "Hazardous material" means that term as defined in section 19b of 1949 PA 300, MCL 257.19b.

(d) "Juvenile disposition" means either of the following:

(i) A finding of juvenile delinquency under chapter 403 of title 18 of the United States Code, 18 U.S.C. 5031 to 5040 and 5042.

(ii) The entry of a judgment or order of disposition by a court of another state that states or is based upon a finding that a juvenile violated a law of another state that would have been a criminal offense if committed by an adult in that state.

(e) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

(f) "Office of substance abuse services" means the agency created by section 6201.

(g) "Prior conviction" means either of the following:

(i) A conviction for an attempt to violate, a conspiracy to violate, or a violation of part 74 or section 17766a, a local ordinance that prohibits conduct prohibited under part 74 or section 17766a, or a law of another state that prohibits conduct prohibited under part 74 or section 17766a.

(ii) A conviction for an attempt to violate, a conspiracy to violate, or a violation of the controlled substances act, title II of the comprehensive drug abuse prevention and control act of 1970, Public Law 91-513, 84 Stat. 1242.

(h) "Probate court disposition" means the entry of a probate court order of disposition for a child found to be within the provisions of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.28.

(i) "Work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

History: Add. 1993, Act 361, Eff. Sept. 1, 1994;—Am. 1999, Act 74, Eff. Oct. 1, 1999;—Am. 1999, Act 144, Eff. Jan. 21, 2000.

Popular name: Act 368

333.7409 Conviction or acquittal under federal law or law of other state as bar to prosecution.

Sec. 7409. If a violation of this article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7410 Violations by individual 18 years of age or over; "library" and "school property" defined; distribution of marihuana; penalties.

Sec. 7410. (1) Except as otherwise provided in subsections (2) and (3), an individual 18 years of age or over who violates section 7401(2)(a)(iv) by delivering or distributing a controlled substance listed in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) to an individual under 18 years of age who is at least 3 years the deliverer's or distributor's junior may be punished by the fine authorized by section 7401(2)(a)(iv) or by a term of imprisonment of not less than 1 year nor more than twice that authorized by section 7401(2)(a)(iv), or both. An individual 18 years of age or over who violates section 7401 or 7401b by delivering or distributing any other controlled substance listed in schedules 1 to 5 or gamma-butyrolactone to an individual under 18 years of age who is at least 3 years the distributor's junior may be punished by the fine authorized by section 7401(2)(b), (c), or (d) or 7401b, or by a term of imprisonment not more than twice that authorized by section 7401(2)(b), (c), or (d) or 7401b, or both.

(2) An individual 18 years of age or over who violates section 7401(2)(a)(iv) by delivering a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) to another person on or within 1,000 feet of school property or a library shall be punished, subject to subsection (5), by a term of imprisonment of not less than 2 years or more than 3 times that authorized by section 7401(2)(a)(iv) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7401(2)(a)(iv).

(3) An individual 18 years of age or over who violates section 7401(2)(a)(iv) by possessing with intent to deliver to another person on or within 1,000 feet of school property or a library a controlled substance

described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) shall be punished, subject to subsection (5), by a term of imprisonment of not less than 2 years or more than twice that authorized by section 7401(2)(a)(iv) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7401(2)(a)(iv).

(4) An individual 18 years of age or over who violates section 7401b or 7403(2)(a)(v), (b), (c), or (d) by possessing gamma-butyrolactone or a controlled substance on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7401b or 7403(2)(a)(v), (b), (c), or (d).

(5) The court may depart from the minimum term of imprisonment authorized under subsection (2) or (3) if the court finds on the record that there are substantial and compelling reasons to do so.

(6) As used in this section:

(a) "Library" means a library that is established by the state; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of government and authorities; a community college district; a college or university; or any private library open to the public.

(b) "School property" means a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational, or parochial school, except those buildings used primarily for adult education or college extension courses.

(7) A person who distributes marihuana without remuneration and not to further commercial distribution and who does not violate subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, unless the distribution is in accordance with the federal law or the law of this state.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 12, Eff. June 1, 1988;—Am. 1994, Act 174, Eff. Sept. 1, 1994;—Am. 1999, Act 188, Imd. Eff. Nov. 24, 1999;—Am. 2000, Act 302, Eff. Jan. 1, 2001;—Am. 2006, Act 216, Imd. Eff. June 26, 2006;—Am. 2006, Act 552, Eff. Mar. 30, 2007.

Popular name: Act 368

333.7410a Delivery or intent to deliver controlled substance in or within public or private park; term of imprisonment; definitions.

Sec. 7410a. (1) An individual 18 years of age or over who does any of the following may be punished by a term of imprisonment of not more than 2 years:

(a) Violates section 7401(2)(a)(iv) or (2)(b)(i) or section 7401b by delivering a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(b) Violates section 7401(2)(a)(iv) or (2)(b)(i) or section 7401b by possessing with intent to deliver a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(c) Violates section 7403(2)(a)(v), (b), (c), or (d) or section 7401b by possessing a controlled substance or gamma-butyrolactone in or within 1,000 feet of a public park or private park.

(d) Violates section 7401c within 1,000 feet of a public park or private park.

(2) The term of imprisonment authorized under subsection (1) is in addition to the term of imprisonment authorized for the violation of section 7401(2)(a)(iv) or (2)(b)(i), section 7401b, section 7401c, or section 7403(2)(a)(v), (b), (c), or (d).

(3) As used in this section:

(a) "Private park" means real property owned or maintained by a private individual or entity and that is open to the general public or local residents for recreation or amusement.

(b) "Public park" means real property owned or maintained by this state or a political subdivision of this state that is designated by this state or by that political subdivision as a public park.

History: Add. 1998, Act 261, Eff. Oct. 1, 1998;—Am. 2000, Act 302, Eff. Jan. 1, 2001;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2006, Act 217, Imd. Eff. June 26, 2006.

Popular name: Act 368

333.7411 Probation of individual with no previous conviction; entering adjudication of guilt upon violation of probation; discharge and dismissal without adjudication of guilt; nonpublic record of arrest and discharge and dismissal; effect of civil fine for first violation; requiring individual to attend course of instruction or rehabilitation program; failure to complete instruction or program as violation of probation; screening and assessment; participation in rehabilitative programs; payment of costs; failure to complete program as violation of probation.

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(v), 7403(2)(b), (c), or (d), or of use of a controlled substance under section 7404, or possession or use of an imitation controlled substance under section 7341 for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as provided in subsection (2)(b), is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual.

(2) The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to any or all of the following:

(a) To a court, police agency, or office of a prosecuting attorney upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance, or an imitation controlled substance as defined in section 7341, covered in this article has already once utilized this section.

(b) To a court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(4) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1076.

(c) To the state department of corrections, a law enforcement agency, a court, or the office of a prosecuting attorney upon request of the department, law enforcement agency, court, or office of a prosecuting attorney, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department, law enforcement agency, court, or office of prosecuting attorney or an applicant for employment with the department, law enforcement agency, court, or office of prosecuting attorney.

(ii) If the individual is an employee of the department, law enforcement agency, court, or prosecuting attorney, the date on which the court placed the individual on probation occurred after March 25, 2002.

(iii) The record shall be used by the department of corrections, law enforcement agency, court, or prosecuting attorney only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(3) For purposes of this section, a person subjected to a civil fine for a first violation of section 7341(4) shall not be considered to have previously been convicted of an offense under this article.

(4) Except as provided in subsection (5), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv), the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

(5) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (1), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1984, Act 347, Eff. Mar. 29, 1985;—Am. 1988, Act 144, Imd. Eff. June 6, 1988;—Am. 1993, Act 169, Eff. Sept. 30, 1993;—Am. 2002, Act 79, Imd. Eff. Mar. 25, 2002;—Am. 2004, Act 225, Eff. Jan. 1, 2005.

Popular name: Act 368

333.7413 Conviction of second or subsequent violation; penalty.

Sec. 7413. (1) An individual who was convicted previously for a violation of any of the following offenses and is thereafter convicted of a second or subsequent violation of any of the following offenses shall be imprisoned for life and shall not be eligible for probation, suspension of sentence, or parole during that mandatory term:

- (a) A violation of section 7401(2)(a)(ii) or (iii).
- (b) A violation of section 7403(2)(a)(ii) or (iii).
- (c) Conspiracy to commit an offense proscribed by section 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

(2) Except as otherwise provided in subsections (1) and (3), an individual convicted of a second or subsequent offense under this article may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both.

(3) An individual convicted of a second or subsequent offense under section 7410(2) or (3) shall be punished, subject to subsection (4), by a term of imprisonment of not less than 5 years nor more than twice that authorized under section 7410(2) or (3) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7410(2) or (3); and shall not be eligible for probation or suspension of sentence during the term of imprisonment.

(4) The court may depart from the minimum term of imprisonment authorized under subsection (3) if the court finds on the record that there are substantial and compelling reasons to do so.

(5) For purposes of subsection (2), an offense is considered a second or subsequent offense, if, before conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to a narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 12, Eff. June 1, 1988;—Am. 1988, Act 144, Imd. Eff. June 6, 1988.

Popular name: Act 368

333.7415 Dismissal of case; reduction of charge; plea of guilty, guilty but mentally ill, or nolo contendere.

Sec. 7415. (1) After the arraignment of a defendant on a warrant charging the defendant with the commission of any of the offenses specified in section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii), or with conspiracy to commit an offense specified in section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii), the examining magistrate shall not dismiss the case upon motion of the prosecuting attorney unless the dismissal is with prejudice, nor shall the examining magistrate permit the prosecuting attorney to reduce the charge if it appears to the examining magistrate at the conclusion of the preliminary examination that 1 or more of the offenses set forth in this subsection was committed and that there is probable cause for charging the defendant with a violation of 1 or more of the offenses.

(2) At or after the arraignment of a defendant on an indictment or information charging the defendant with the commission of any of the offenses specified in section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii), or with conspiracy to commit an offense specified in section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii), the court in which the indictment or information is filed shall not dismiss the case upon motion of the prosecuting attorney unless the dismissal is with prejudice, and the court shall not accept a plea of guilty, guilty but mentally ill, or nolo contendere unless, with the consent of the prosecuting attorney on the record, the defendant enters a plea of guilty, guilty but mentally ill, or nolo contendere to not less than 1 of the following felonies:

- (a) An offense described in section 7401(2)(a)(i), (ii), (iii), or (iv).
- (b) An offense described in section 7403(2)(a)(i), (ii), (iii), or (iv).
- (c) Conspiracy to commit an offense described in subdivision (a) or (b).

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 144, Imd. Eff. June 6, 1988.

Popular name: Act 368

333.7416 Recruiting, inducing, soliciting, or coercing minor to commit felony; penalties; exception.

Sec. 7416. (1) A person 17 years of age or over who recruits, induces, solicits, or coerces a minor less than 17 years of age to commit or attempt to commit any act that would be a felony under this part if committed by an adult is guilty of a felony and may be punished by a fine of not more than the fine authorized by this part for an adult who commits such an act, and shall be punished, subject to subsection (3), as follows:

(a) Except as provided in subdivision (b), by imprisonment for not less than 1/2 of the maximum term of imprisonment authorized by this part for an adult who commits such an act and not more than the maximum

term of imprisonment authorized by this part for an adult who commits such an act.

(b) If the act to be committed or attempted by the minor is a violation of section 7401(2)(a)(i), by imprisonment for life.

(2) A person subject to a sentence under subsection (1) shall not be subject to a delayed sentence or a suspended sentence and shall not be eligible for probation.

(3) The court may depart from a minimum term of imprisonment authorized under subsection (1)(a) or (b) if the court finds on the record that there are substantial and compelling reasons to do so.

(4) Subsection (1)(a) does not apply to an act that is a violation of section 7401(2)(d) and that involves the manufacture, delivery, or possession with intent to deliver of marihuana. This section applies whether or not the person 17 years of age or older knew or had reason to know the age of the minor less than 17 years of age.

History: Add. 1988, Act 17, Eff. June 1, 1988;—Am. 1995, Act 95, Eff. Aug. 1, 1995.

Popular name: Act 368

333.7451 “Drug paraphernalia” defined.

Sec. 7451. As used in sections 7453 to 7461 and section 7521, “drug paraphernalia” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting; propagating; cultivating; growing; harvesting; manufacturing; compounding; converting; producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance; including, but not limited to, all of the following:

(a) An isomerization device specifically designed for use in increasing the potency of any species of plant which plant is a controlled substance.

(b) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.

(c) A weight scale or balance specifically designed for use in weighing or measuring a controlled substance.

(d) A diluent or adulterant, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose, and lactose, specifically designed for use with a controlled substance.

(e) A separation gin or sifter specifically designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana.

(f) An object specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

(g) A kit specifically designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.

(h) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(i) A device, commonly known as a cocaine kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.

(j) A device, commonly known as a bullet, that is specifically designed to deliver a measured amount of controlled substances to the user.

(k) A device, commonly known as a snorter, that is specifically designed to carry a small amount of controlled substances to the user's nose.

(l) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not limited to, a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.

(m) A spoon, with or without a chain attached, that has a small diameter bowl and that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7453 Sale of drug paraphernalia prohibited; notice; compliance.

Sec. 7453. (1) Subject to subsection (2), a person shall not sell or offer for sale drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) Before a person is arrested for a violation of subsection (1), the attorney general or a prosecuting attorney shall notify the person in writing, not less than 2 business days before the person is to be arrested,

that the person is in possession of specific, defined material that has been determined by the attorney general or prosecuting attorney to be drug paraphernalia. The notice also shall request that the person refrain from selling or offering for sale the material and shall state that if the person complies with the notice, no arrest will be made for a violation of subsection (1).

(3) If a person complies with a notice sent under subsection (2), the compliance is a complete defense for the person against a prosecution under section 7453, as long as the compliance continues.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7455 Violation of MCL 333.7453 as misdemeanor; penalty.

Sec. 7455. (1) A person who violates section 7453 is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$5,000.00, or both.

(2) A person 18 years of age or older who violates section 7453 by selling or offering to sell drug paraphernalia to a person less than 18 years of age is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$7,500.00, or both.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7457 Applicability of MCL 333.7451 to 333.7455.

Sec. 7457. Sections 7451 to 7455 do not apply to any of the following:

(a) An object sold or offered for sale to a person licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, or any intern, trainee, apprentice, or assistant in a profession licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, for use in that profession.

(b) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.

(c) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.

(d) A blender, bowl, container, spoon, or mixing device not specifically designed for a use described in section 7451.

(e) A hypodermic syringe or needle sold or offered for sale for the purpose of injecting or otherwise treating livestock or other animals.

(f) An object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988;—Am. 2006, Act 458, Eff. Mar. 20, 2007.

Popular name: Act 368

333.7459 Action for declaratory judgment; defendant.

Sec. 7459. (1) A person who has received a notice under section 7453(2) may commence an action for a declaratory judgment to obtain an adjudication of the legality of the intended sale or offer to sell.

(2) The attorney general or the prosecuting attorney who sent the notice under section 7453(2) shall be made the defendant to an action commenced under subsection (1).

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7461 Declaratory judgment as complete defense.

Sec. 7461. If a declaratory judgment has been issued pursuant to section 7459 stating that sale or offer to sell specified material does not violate section 7453, the declaratory judgment is a complete defense for the person obtaining such a judgment against a prosecution under section 7453.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368